

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
5:23-CV-349

RONALD JOHNSON,

Plaintiff,

v.

TOWN OF SMITHFIELD et al.,

Defendants.

**DEFENDANT ZELLINGER'S  
MOTION TO QUASH SUBPOENA**

NOW COMES Benjamin Zellinger, by and through undersigned counsel, pursuant to Fed. R. Civ. P. 45(d), to respectfully move this Court to quash a subpoena issued to Zellinger on February 20, 2025. The subpoena demands Zellinger to produce the entire discovery file produced by the State to Ronald Johnson in 23CR003494-500, a state court criminal matter, by March 3, 2025, at 10:00am. *See Ex. 1, Zellinger Subpoena.* A nearly identical subpoena was issued to Plaintiff's criminal defense attorney in that same state court criminal matter. *See Ex. 2, Tyndall Subpoena.*

The subpoena should be quashed for several reasons. First, the subpoena seeks disclosure of protected matter. *See* Fed. R. Civ. P. 45 (c)(3)(iii). The material sought is subject to a protective order in the state court criminal matter, which prohibits disclosure of discovery material to anyone other than Plaintiff and his counsel for use in connection with the criminal proceedings. *See Ex. 3, ¶ 1, 23CR003494-500 Protective Order.* Plaintiff does not seek the discovery material for use in connection with the criminal proceedings, but rather, as indicated by the subpoena, for use in the

above-captioned civil matter. Plaintiff's counsel did not represent Plaintiff in the criminal proceedings, nor will she agree to abide by the Protective Order, even in the event she represents Plaintiff in the criminal proceedings moving forward (i.e., on direct appeal or a motion for appropriate relief). In addition, the subpoena was improperly served, poses an undue burden, and fails to allow a reasonable time to comply. *See* Fed. R. Civ. P. 45(d)(3)(A).

For these reasons, which are addressed in the supporting memorandum of law filed contemporaneously with this motion, Zellinger respectfully seeks an order from this Court quashing the subpoena issued on February 20, 2025.

This the 28th day of February 2025.

**JEFF JACKSON**  
**Attorney General**

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